MOHAMED YASIN BIN HUSSIN v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Kulasekeram and Tan Ah Tah JJ.) November 4, 1974]
[Singapore — Criminal Appeal No. 5 of 1974]

Criminal Law and Procedure — Trial on charge of murder — Evidence of statement of accused to magistrate — Admissibility of — Trial within a trial.

Penal Code, s. 300 — Murder — Definition — Intention to cause bodily injury and bodily injury sufficient to cause death.

The appellant had been convicted of murder. The evidence showed that the deceased died from bodily injuries including fractures of the ribs and the medical evidence was that the injuries in the ribs were sufficient in the ordinary course of nature to cause death. The case for the prosecution against the appellant depended solely on the statement made by him before the magistrate. After a trial within the trial the statement was admitted in evidence.

Held: (1) in this case the trial judges were satisfied that the fatal injury was neither accidentally nor otherwise unintentionally caused by the appellant. If the injury which the offender intended causing and did cause was sufficient in the ordinary course of nature to cause death the offence was murder as defined in the third limb of section 300 of the Penal Code;

(2) the statement of the appellant had been correctly admitted in evidence.

COURT OF CRIMINAL APPEAL.

G. Raman for the appellant.

Glenn J. Knight (Deputy Public Prosecutor) for the respondents.

Wee Chong Jin C.J.: A well nourished Chinese 58 year old widow lived alone in a hut situated right by the sea on a small island, Pulau Ubin, off Singapore. Her nearest neighbour was about 100 yards away. On 23rd April 1972 at about 9.30 a.m. her dead body was found floating in the sea about 200 yards from Pulau Ubin. She was found clad in a blue striped Chinese blouse but naked below her waist. There were five button spaces on the blouse but only the top one remained as a half button. The other button spaces had bare threads showing.

An autopsy was performed and the pathologist's evidence is that death occurred at around midnight of 22nd April 1972. There were fifteen external injuries on the deceased and these were: —

"(1) Multiple bruises over the whole forehead with small abrasion on the left side.

(2) Multiple small bruises over the bridge of nose with small abrasions.

(3) Haemorrhages in both eyes especially on the right side with bruise around the right eye.

(4) Multiple small bruises and abrasions on the lower lip and chin with laceration on the right corner of lower lip.

(5) Bruises on left chin.

(6) A small irregular laceration 0.5 cm long on the left side of upper neck. Further down the left side of the lower neck another similar laceration.

(7) Small bruises on lobe of left ear.

(8) Right face appears swollen as compared with left face.

(9) Extensive bruising on the radial side of right wrist 7 x 5 cms and back of right hand at base of index finger.

(10) Multiple abrasions and bruises along left forearm wrist and back of left hand.

(11) Bruise and abrasions on left hip with some linear scratches.

(12) A group of three rounded bruises about 1 cm in diameter on the inner side of right knee consistent with finger tip marks.

(13) Another group of 4 similar bruises on the inner side of left knee.

(14) Right elbow shows abraided skin with no vital reactions indicating injury made after death.

(15) Left elbow shows similar abraided skin without vital reactions."

His evidence is that some of these external injuries were caused by a blunt object or blunt instrument and that the injuries on the mouth and chin were consistent with the application of a hand with force over the mouth or a combination of a blow to the mouth with a blunt object such as a fist and the application of a hand to the mouth. He said some of the injuries were defensive injuries and some could have occurred through contact with a rough surface like the ground. He said injuries 14 and 15 could have been caused by the dead body knocking on to rocks while floating in the sea.

He also found fractures of the left 2nd to the 5th rib and of the right 2nd to the 6th rib, at mid-clavicle line anteriorly on both sides. There was also bruising of the pleura but there were no external injuries over the fractured ribs and no free blood flowing in the chest cavity. In his opinion the internal injuries he found were consistent with compression from in front such as someone sitting on the deceased's chest with force and the deceased lying down on the floor. He was of the opinion that independent of the other injuries the injuries on the ribs were sufficient in the ordinary course of nature to cause death and that the deceased died through a sudden cardiac arrest because of the pain and shock caused by the simultaneous fracture of the nine ribs. He was positive that the deceased did not die of drowning and that there was no evidence of manual strangulation.

A detailed examination of the deceased's hut disclosed that the bedroom was in disorder with two drawers of a cabinet having been forced open and left on the floor. In the kitchen a gold coloured ear-ring, a pin for cleaning ears, three white buttons and two hair clips were found on the floor.

On 9th February 1973 one Harun bin Ripin was arrested in connection with the deceased's death. On 10th February 1973 the appellant Mohamed Yasin bin Hussin alias Rosli was also arrested. They were subsequently charged and tried before the High Court consisting of two judges of having caused the death of the deceased in circumstances amounting to the offence of murder. The charge reads as follows: —

"That you, 1. Harun bin Ripin
2. Mohd. Yasin bin Hussin alias Rosli

between 10.00 p.m. on the 22nd day of April 1972 and 9.30 a.m. on the 23rd day of April 1972 at No. 836-X Pulau Ubin, Singapore, in furtherance of the common intention of both of you, committed murder by causing the death of one Poon Sai Im, and thereby committed an offence punishable under section 302 read with section 34 of the Penal Code (Cap. 103)".

At the conclusion of the trial, Harun bin Ripin was acquitted of the offence of murder but was convicted of robbery by night and sentenced to a term of imprisonment and to caning. The appellant was con-

victed of the offence of murder and sentenced to death. He now appeals against his conviction.

At the trial, the case for the prosecution against each of the two accused persons depended solely on a statement which each of them had made before a magistrate. The appellant made his statement the day after his arrest. At the trial counsel for each accused objected to its admissibility and in consequence there was a trial within a trial to decide the question of admissibility. After hearing evidence the trial judges admitted in evidence the statements made by both accused. The only relevant statement for the purposes of the present appeal is the statement of the appellant which reads as follows: —

"I came here to admit that I was wrong. I had a meeting with two other friends Harun and Maarof. The discussion centred around going to a female Chinese's house. It was Harun who asked Maarof whether he wanted to go. Maarof did not want to. When he asked me I told him I wanted to. I went to fetch a sampan at about 7.30 p.m. Harun and I then went to the house of the female Chinese. The female Chinese was about to sleep when we arrived. Harun and I circled the house. The female Chinese was silent and the lights were being dimmed.

Harun and I then looked for a spot from where we could climb into the house. There was no entrance where I could enter. So I went to disturb the chickens at the chicken coop. The chickens made a lot of noise which woke up the female Chinese who came out with a small light.

Immediately when she opened the door, Harun jumped at her. The female Chinese at this stage shouted but her voice was faint. Harun grabbed the female Chinese after which he asked me to grab hold of this woman. When I took over and grabbed this woman, Harun entered the room. When I grabbed the woman she put up a fight. I had no intention of killing her. I just hit her. Whilst I was warding off her attacks, her trousers accidentally slipped off. When I saw this my desire was aroused. I then wanted to have sexual intercourse with her. Before I could start to play her she gave a blow at me. I warded it off. When my penis penetrated into her vagina she suddenly fell silent.

After I had played her I pulled out my penis. The female Chinese was still quiet. Whilst I was doing all these Harun was ransacking the room. When Harun came out of the room he found nothing inside it. He then asked me to carry the woman into the sampan. After putting the body into the sampan we left the shore. I was rowing the sampan. Half way across Harun suggested that we throw the woman into the sea. After doing so i.e. throwing the woman into the sea, I went back to the jetty.

From the jetty Harun and I went to Bedok for some food. After having some food Harun asked me to follow him to Desker Road. He wanted to give me a treat. There I played another woman i.e. had sexual intercourse. From Desker Road Harun asked me to go back to Changi. Then I went back to the motor-boat where I slept. That is all".

The appellant, when called to enter upon his defence to the charge of murder, elected to make an unsworn statement from the dock, the material portions of which read as follows: —

"Harun then came into the sampan and I rowed it to Pulau Ubin. When we were about to reach Pulau Ubin I pointed the house where we wanted to steal, to Harun. We landed on the beach and pulled the sampan ashore. I walked ahead of Harun and he followed me. We circled the house two or three times. Then I went to disturb the fowls. The fowls made a lot of noise. I heard a voice of a Chinese woman inside the house. Harun was standing by the side of the door. When the door was opened I went straight into the house and I saw a woman lying on the ground. I placed my hand on this woman's mouth and Harun went into the house. The woman was struggling. I tried to grab the torchlight which she was holding. She hit my hand with her hand. I shut her mouth with my hand. Again I tried to grab her torchlight. She pushed my hand away and she shouted. I shut her mouth with my hand again and then I managed to grab the torchlight from her. She was struggling. So I hit her hand with the torchlight. With her hand she hit me on my face. So I pressed my hand on her mouth again. Harun then came out and took the torchlight away from my hand. Harun went back into the house. I shut this woman's mouth with my hand. She again struggled and pushed my hand away but I managed to shut her mouth with my hand. Then suddenly she was motionless. I lifted her hand and she did not make any movement. I shook her. Then I saw that she was dead. I became worried. I then stood near the kitchen door. Harun came out and shorn the torchlight at this woman. Harun asked me what had happened to this woman. I told him that I shut her mouth with my hand and that she died. Then Harun wanted to hit me. I told Harun that I had no intention to kill this woman. I was only preventing her from shouting. Harun then said what we were to do then. I then suggested that we carry her to the beach, place some water on her face and try to revive her. We carried the woman and placed her on the beach.

... I went to Pulau Ubin to steal and I had no intention to kill anyone".

There can be no doubt whatsoever from the evidence that the only person that evening who laid hands on the deceased before she was "placed on the beach" was the appellant. The vital questions were whether or not her death was caused by an act of the appellant and, if so, whether or not he had caused her death in circumstances amounting to murder as defined in section 300 of the Penal Code.

The material provisions of section 300 read as follows: —

"300. Except in the cases hereinafter excepted culpable homicide is murder —

(a) ... ...

(b) ... ...

(c) if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death;"

The trial judges held that the appellant caused the death of the deceased within the above definition and convicted him of the offence of murder. Their findings and their reasons for arriving at their verdict of guilty were expressed by the presiding judge in the following passage of their oral judgment: —

"After careful consideration of all the evidence in the case, we are satisfied beyond a reasonable doubt that the injury which caused the death of the deceased was inflicted by the 2nd accused.

According to Dr. Chao, whose evidence we accept, this injury comprised fractures of 9 ribs in the front of the chest, caused by compression of the chest with some force. The sudden pain and shock suffered by the deceased as a result of these fractures brought about the cardiac arrest, causing her death within one or two minutes. According to Dr. Chao, the fracturcs of the 9 ribs was sufficient to cause death in the ordinary course of nature, independently of other injuries found on the deceased.

On the evidence before us, we have no doubt at all that the aforesaid fatal injury was intentionally caused by the 2nd accused and that it was not caused accidentally or otherwise unintentionally. Consequently, the act of the 2nd accused in causing the fatal injury was an act which clearly falls within the third limb of the definition of murder, because he intended to inflict that injury within the meaning of the said third limb, and we accordingly find him guilty of murder as defined in the Penal Code".

The main contention raised before us on behalf of the appellant is that the evidence was insufficient to support the finding that the fatal injury *i.e.* the simultaneous fracture of the nine ribs in the front of the chest was intentionally caused by the appellant. It is argued that the appellant used violence on the deceased with the intention of subduing her to enable him to rape her and not with the intention to cause the fatal injury. We reject that contention. While it is clear that the evidence also establishes that the appellant used violent means with the intention of subduing her in order to commit rape, it is also clear that there was sufficient evidence to support a finding that the appellant also intended to inflict the fatal injury. The trial judges found that the fatal injury was neither accidentally nor otherwise unintentionally caused by the appellant and in the circumstances it is clear that the subjective test involved in the third limb of section 300 has been satisfied. The law is clear. If the injury that the offender intends causing and does cause is sufficient in the ordinary course of nature to cause death the offence is murder as defined in the third limb of section 300.

The only other point raised is that the trial judges, at the trial within a trial, had failed to take into consideration the evidence that five days after the appellant had made a statement before a magistrate on 11th February, he had again appeared before another magistrate but, after preliminary questions had been put to him by the magistrate, had told the magistrate that he did not wish to make a statement. It is argued that his refusal to make another statement was sufficient corroboration of his evidence during the trial within a trial that he had been threatened, assaulted and promises and inducements had been given to him by police officers before he made his statement on 11th February to a magistrate and that the trial judges had failed to take that into consideration in arriving at their finding that his statement of the 11th February was a voluntary statement.

We reject this contention. The trial within a trial lasted several days and all the evidence including the point now taken was before the trial judges and in our opinion there is no sufficient reason for this court to take the view that the trial judges had failed to consider all the evidence before them, including the evidence relating to the unproductive appearance of the appellant before another magistrate, in arriving at their decision to admit in evidence the appellant's statement of the 11th February.

Accordingly, the appeal is dismissed.

Appeal dismissed.

Solicitors: *Yeow & Raman.*

RAJA'S COMMERCIAL COLLEGE v. GIAN SINGH & CO. LTD.

[C.A. (Wee Chong Jin C.J., Kulasekeran and Tan Ah Tah JJ.) November 12, 1974]

[Singapore — Civil Appeal No. 39 of 1973]

Landlord and Tenant — Tenancy determined by notice to quit — Tenant holding over after notice to quit — Mesne profits — Whether damages awarded should take account of the tax liability of landlord if he had received amount as rent — Whether mesne profits liable to tax — Income Tax Act (Cap. 141), s. 10(1)(f).

Income Tax — Mesne profits liable to tax — Income Tax Act (Cap. 141), s. 10(1)(f).

In this case the learned trial judge had made an order of possession in favour of the respondents, the landlords, and had ordered the appellants, the tenants, to pay mesne profits from the date of the expiry of the notice to quit to the date of delivery of possession. On appeal the appellants contended that the trial judge erred in accepting the computations and calculations of the respondents and that he erred in law in failing to reduce the damages on the ground that the amount of the loss for which the damages represented compensation would have been diminished in the respondent's case by the incidence of income tax.

Held: (1) in this case the trial judge was entitled to act on the respondent's evidence as that was the best evidence available, the appellants neither challenging it nor adducing contrary evidence;

(2) the amount awarded to the respondents as mesne profits would be liable to income tax as "any other profits arising from property" under section 10(1)(f) of the Income Tax Act and therefore there was no reason for the learned trial judge to reduce the damages awarded to the respondent.

Cases referred to:-

(1) *British Transport Commission* v. *Gourley* [1956] A.C. 185.

(2) *Hall & Co. Ltd.* v. *Pearlberg* [1956] 1 W.L.R. 244.

COURT OF APPEAL.

A. P. Godwin for the appellants.

J. Grimberg for the respondents.

Wee Chong Jin C.J. (delivering the judgment of the court): The appellants in this appeal were monthly tenants from the year 1957 of the respondents, the owners of a building known as Gian Singh Building situate at 30-1 Raffles Place, Singapore, the commercial heart of Singapore. Their tenancy which comprised a portion of the second floor amounting to an area of 2,917 square feet was determined by a Notice to Quit expiring on the 31st December 1967. They refused to comply with the Notice to Quit and continued to remain in possession. The respondents commenced proceedings in January 1968 which the appellants resisted claiming the protection of the Control of Rent Ordinance. The action did not come to trial, for reasons which are irrelevant for the purposes of the present appeal, until November 1973. The main issue at the trial was whether certain structural alterations and additions to the building which the respondents carried out in 1953 had converted the building into a new building and thus not subject to the provisions of the Control of Rent Ordinance.

The trial judge found in favour of the respondents and made an order for possession. The appellants appealed against the order for possession but abandoned this ground when the appeal came up for hearing. In their Statement of Claim the respondents also claimed double rent from the 1st January 1968 to the date